**HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 1543 OF 2005**

M/s. K. K. Gupta & Sons,
Proprietor Kamal Kantilal Gupta. ..Petitioner.

Versus.

Union Bank of India. ..Respondent.

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Shri. A. M. Shah i/b Dr. D. R. Talankar for the petitioner.

Shri. N. S. Fadia for the respondent.

**CORAM: Smt. Ranjana P. Desai,**
**& Abhay S. Oka, JJ.**

**DATE : November 24, 2005.**

**P.C.**

1. The petitioner is the original defendant in Original Application No. 3054 of 2000 and the respondent - Union Bank of India is the applicant. For convenience parties are referred to as per their status in the application. The case of the applicant is that the bills of exchange which are the subject matter of the Original Application are drawn by M/s. Basant Alloy Steel Ltd. who are the drawers. The said bills of exchange were drawn on the petitioner / defendant for valuable consideration in favour of the applicant. According to the applicant, when the said bills were presented to the defendant for encashment, the same

were dishonoured. Hence the Original Application was filed for amount due and payable under the said bills of exchange. The Debt Recovery Tribunal ("DRT" for short), allwed the application and appeal was carried before the Debt Recovery Appellate Tribunal ("DRAT" for short), which also came to be dismissed. Hence the present Writ Petition.

2. One of the contentions raised by the petitioner was that the bills of exchange were not drawn by the authorised signatory of the drawer of the hundies and therefore they were inadmissible in evidence and the applicant - bank was, therefore, not the holder in due course. We find no substance in this contention. The bills of exchange have been accepted by the defendants and they have been discounted by the bank relying on the acceptance. It is well settled that the negotiable instrument must on its face show that it has been drawn, made, accepted or endorsed by the company before it could be bound by it. These conditions are fulfilled in this case. The DRT & DRAT have therefore rightly rejected this submission.

3. It was contended that as per the practice the amounts were paid to the drawer and therefore the applicant is not liable. This submission also has no

merit because there is no clear indication that there was any such agreement. Admittedly there is no written contract. In any case in the facts of this case the alleged arrangement does not constitute a contract to the contrary within the meaning of sections 32 and 37 of the Negotiable Instruments Act. Besides, even assuming the payment was made directly to the drawer that does not extinguish the acceptor's liability. In view of this, we find no reason to interfere with the concurrent view taken by the DRT and DRAT. There is no merit in the petition. The petition is rejected.

(SMT. RANJANA P. DESAI, J.)

(ABHAY S. OKA, J.)